

MF 03-4

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**CAPTAIN JOHN DOE
D/B/A DOE'S ENTERPRISES, INC.,**
Taxpayer

**No. 02-ST-0000
Motor Fuel Refund Claim
Period 4/01 to 9/01**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John Doe appearing *pro se*, Mr. Gary Stutland, appearing on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This matter comes on for hearing by way of a protest filed by Mr. John Doe d/b/a Doe's Enterprises, Inc. (hereinafter "taxpayer") on June 8, 2002, in response to the Department's notice of denial dated April 25, 2002, which denied the taxpayer's claim for a motor fuel tax refund for the period April, 2001, to September, 2001. A hearing was held in this matter on October 16, 2002. Following submission of all evidence and a review of the record, it is recommended that the notice of denial be finalized as issued. In support thereof, the following "Findings of Fact" and "Conclusions of Law" are made.

Findings of Fact:

1. On March 28, 2002, taxpayer's filed an RMFT-11-A, "Illinois Motor Fuel Tax Refund Claim" requesting a refund of \$1,267 for taxes paid on 5,893 gallons of undyed diesel fuel used for "purposes of charter boat sportfishing trips in Lake Michigan," covering the period April, 2001, through September, 2001. Dept. Ex. No. 1.
2. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's denial of taxpayer's claim for refund dated April 25, 2002, in the amount of \$1,267. Tr. pp. 7-8; Dept Ex. No. 1.

Conclusions of Law:

Section 21 of the Illinois Motor Fuel Tax Law (35 ILCS 505/1 *et seq.*) incorporates by reference section 6(b) of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*) which provides that the Department's determination of a refund claim is *prima facie* correct and *prima facie* evidence of the correctness of the determination. 35 ILCS 505/21; 35 ILCS 120/6(b). Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the determination is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203 (1st Dist. 1991). In the instant case, the Department denied the taxpayer's entire refund claim of \$1,267 for taxes paid on 5,893 gallons of undyed diesel fuel. Dept. Ex. No. 1.

Section 13 of the Illinois Motor Fuel Tax Law (35 ILCS 505/13) provides that refund claims for taxes on undyed diesel fuel paid on or after January 1, 2000 shall not be allowed except for fuel used by a commercial vehicle as that term is defined in the Illinois Vehicle Code. The term "vehicle" as used in the Illinois Vehicle Code is defined as a device by which property "is or may be transported or drawn upon a highway." 625 ILCS 5-1/-217. The taxpayer's charter boat clearly

does not fit this definition. Section 13 of the Illinois Motor Fuel Tax Law also allows refund claims for taxes on undyed diesel fuel based upon usage of the fuel in certain enumerated circumstances (i.e. fuel used in a manufacturing process, fuel used by an agricultural fertilizer implement, fuel used by refrigeration units). Taxpayer's usage of the undyed diesel fuel in a charter boat does not fit any of the enumerated circumstances. Taxpayer has failed to show that the Department's determination denying the refund claim was incorrect.

Taxpayer argued at the evidentiary hearing that he received refunds of taxes on undyed fuel in the past. Whereas this may be true, it is noted that Section 13 of the Illinois Motor Fuel Tax Law was modified by Public Act 92-0030, effective July 1, 2001, which affected motor fuel refund criteria that had been previously allowed. Taxpayer argued further that he is forced to purchase undyed diesel fuel because the park district "denied [him] the right to have a private supplier come into the park district property to do anything as far as fuel. They have their own fuel docks, and they distribute undyed fuel and that's it." Tr. p. 6.

Taxpayer's circumstances are problematic but are not a basis for granting the refund claim. The taxpayer may have been unaware of the changes in the statute, but the newly enacted provisions must be followed. As unfortunate as the taxpayer's situation may be, the current provision of the statute does not allow a claim for refund of taxes paid on undyed diesel fuel used by a charter boat.

WHEREFORE, for the reasons stated above, it is my recommendation that the denial of taxpayer's claim for a refund of taxes on undyed diesel fuel in the amount of \$1,267 be finalized.

January 7, 2003

Kenneth J. Galvin
Administrative Law Judge